



Staff Report

Agenda Item: **Waiver of Conflict of Interest**– Approval of Waiver of Conflict of Interest for the firm Boyle, Pecharich, Cline, Whittington & Stallings, related to their representation of Verde Exploration and the Town of Clarkdale, in regard to the possible acquisition of the Clark Mansion by Verde Exploration and any related necessary amendments to the Restated Development Agreement, rezonings, or other legal matters arising due to Freeport McMoran’s desire to convey the Clark Mansion and surrounding property to Verde Exploration.

Staff Contact: Sherry Bailey, Community Development Director

Meeting Date: July 28, 2009

Background: The Town of Clarkdale is represented by Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C. (B.P.C.W. & S) as the Town Attorney, with Robert S. Pecharich being assigned as the primary attorney working with the Town of Clarkdale. B.P.C.W. & S also serves as the attorney for Verde Exploration, Ltd, with Mr. Pecharich serving as their primary attorney.

There have been occasions over the years when the Town of Clarkdale and Verde Exploration explored issues of mutual concern that necessitated legal advice to either Verde Exploration, the Town of Clarkdale, or to both parties. When such occasions arise, it is the attorney’s duty to advise both clients that a conflict of interest exists due to the firms representation of both clients. The clients then have the option to either A) Waive the Conflict of Interest, allowing the attorney to represent both parties, or B) seek counsel from an outside source.

On multiple occasions in the past, the Town of Clarkdale has waived the conflict of interest and allowed B.P.C.W. & S, through Robert S. Pecharich, to represent them on issues involving Verde Exploration.

Although the Town Staff continues to be comfortable recommending a Waiver of the Conflict of Interest for B.P.C.W. & S to represent the Town on any necessary rezoning, or other legal matters arising due to Freeport McMoran’s desire to convey the Clark Mansion and surrounding property to a third party (Verde Exploration), we do feel that it is appropriate that the Council specify that Attorney Gene Neil from B.P.C.W. & S handle the representation of the Town of Clarkdale in this matter. This would allow Robert S. Pecharich from the firm to handle the representation for Verde Exploration.

Staff has worked with Mr. Neil on numerous issues, including the Mountain Gate bond issues, and feels extremely comfortable with his knowledge and expertise on land use issues. Mr. Neil has served as the City Attorney for Sedona and for two communities in the Phoenix area. He has excellent experience in representing cities during sensitive negotiations which benefited the communities.

Recommendation: Staff recommends, with the specification that Town Attorney Gene Neil from B.P.C.W. & S handle the representation of the Town of Clarkdale, the approval of the Waiver of Conflict of Interest for the firm Boyle, Pecharich, Cline, Whittington & Stallings, related to their representation of Verde Exploration and the Town of Clarkdale, in regard to the possible acquisition of the Clark Mansion by Verde Exploration and any related necessary amendments to the Restated Development Agreement, rezonings, or other legal matters arising due to Freeport McMoran's desire to convey the Clark Mansion and surrounding property to Verde Exploration.

WAIVER OF CONFLICT OF INTEREST

WHEREAS, The Town of Clarkdale is represented by the law firm of Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C.; and

WHEREAS, said law firm serves as Town Attorney; and

WHEREAS, said law firm has many other clients, one of which is Verde Exploration, Ltd.; and

WHEREAS, the Town Attorney has represented the Town in negotiating a Settlement Agreement, which was approved by the Clarkdale Town Council on November 13, 2007, with Phelps Dodge Development Corporation related to reimbursement to the Town for Phelps Dodge's share of the costs associated with construction of a wastewater effluent pipeline; and

WHEREAS, the Settlement Agreement indicates, in part, that the Town of Clarkdale and Freeport-McMoran/Phelps Dodge recognized that Phelps Dodge may desire to convey the Clark Mansion, which is a building and surrounding property located within the Verde Valley Ranch development property, to a third party at some point in the future. The parties further recognized that in order to make such conveyance, the Restated Development Agreement between the parties would require an amendment to delete said property from the Restated Development Agreement. The parties further recognized that such deletion would require a zoning determination to determine the uses of the property, and that such zoning process is statutory and takes time to complete; and,

WHEREAS, Freeport-McMoran/Phelps Dodge and the Town of Clarkdale further agreed in the November 13, 2007 Settlement Agreement to meet and discuss the release of the real property known as the Clark Mansion property, from the Development Agreement between the Town of Clarkdale and Phelps Dodge for the project known as the Verde Valley Ranch at the earliest opportunity convenient to both parties; and,

WHEREAS, Verde Exploration is one of the third parties to which Phelps Dodge has considered conveying said real property, as part of a real estate exchange between Phelps Dodge and Verde Exploration, in order for Phelps Dodge to obtain land from Verde Exploration necessary for environmental remediation located in the unincorporated area of Yavapai County, between the towns of Jerome and Clarkdale; and

WHEREAS, the Town Attorney has fully disclosed said information to the Town of Clarkdale.

NOW, THEREFORE, the Town Council of the Town of Clarkdale waives any potential conflict of interest in the Town Attorney, and the law firm of Boyle, Pecharich, Cline, Whittington & Stallings, representing Verde Exploration in the possible acquisition of the Clark Mansion by Verde Exploration from Phelps Dodge, and in the Town Attorney's representation of the Town in negotiating any necessary amendments to the Restated Development Agreement, necessary

rezoning, or other legal matters arising due to Freeport McMoran's desire to convey the Clark Mansion and surrounding property to a third party.

PASSED AND ADOPTED by the Mayor and Common Council on the 28th day of July, 2009.

APPROVED:

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk/Finance Director